

Senate Bill 129

By: Senator Hill of the 32nd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the  
2 "Public Retirement Systems Investment Authority Law," so as to expand the definition of the  
3 term "large retirement system"; to define certain terms; to provide that certain public  
4 retirement systems may invest retirement system assets in certain types of alternative  
5 investments, private placements, and other private investments; to provide that such  
6 investments may be made up to a certain amount; to shield information related to such  
7 investment from public scrutiny; to provide for a code of ethics; to amend Code Section  
8 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of  
9 records is not required and disclosure exempting legal authority, so as to exempt certain  
10 public records from public inspection; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public  
14 Retirement Systems Investment Authority Law," is amended by revising subsection (a) of  
15 Code Section 47-20-84, relating to large retirement systems, as follows:

16 "(a) As used in this Code section, the term 'large retirement system' means:

- 17 (1) Any retirement system created by this title which has an accumulated unfunded  
18 actuarial accrued liability not greater than ~~25~~ 50 percent of the total of its assets;
- 19 (2) The Georgia Municipal Employees Benefit System created by Chapter 5 of this title;
- 20 (3) Any association of like political subdivisions which, on, before, or after July 1, 1999,  
21 contracts with its members for the pooling of assets; and
- 22 (4) Any public retirement system other than a retirement system defined in paragraphs  
23 (1), (2), and (3) of this subsection which meets the following criteria:
- 24 (A) The retirement system assets are in excess of \$50 million;
- 25 (B) The retirement system provides a defined benefit plan;

(C) The retirement system investments are managed by one or more independent professional investment managers recognized by the National Association of Securities Dealers and the United States Securities and Exchange Commission and which adhere to the code of ethical standards and conduct of the Association for Investment Management and Research;

(D) The retirement system investments are limited to those equities of investment grade quality or better, provided that leverage techniques, option techniques, futures, commodities, private placements, and direct participation plans may not be used in making equity investments; and

(E) Has an accumulated unfunded actuarial liability not greater than ~~25~~ 50 percent of the total of its assets."

## SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

"47-20-87.

(a) As used in this Code section, the term:

(1) 'Alternative investments' means the following investments:

(A) Privately placed investment pools, including, without limitation, private investment funds, such as:

(i) Leveraged buyout funds;

(ii) Mezzanine funds;

(iii) Workout funds;

(iv) Debt funds;

(v) Venture capital funds;

(vi) Merchant banking funds; and

(vii) Funds of funds and secondary funds

that include investments in privately placed investment pools described in this subparagraph, in each case whether structured as a partnership, limited liability company, trust, corporation, joint venture, or other entity or investment vehicle of any type; organized or operating in one of the states or territories of the United States or outside the United States; such pool will invest in the United States or outside the United States or any combination thereof; or such pool makes investments of the type described in subparagraph (B) of this paragraph or other investments of any type or any combination thereof;

(B) Private placements and other private investments, including without limitation:

(i) Leveraged buyouts;

(ii) Venture capital investment;

(iii) Equity investments, including, without limitation, preferred and common stock;  
 (iv) Warrants;  
 (v) Options;  
 (vi) Private investments in public securities;  
 (vii) Recapitalizations;  
 (viii) Privatizations;  
 (ix) Mezzanine debt investments;  
 (x) Distressed debt and equity investments, including, without limitation, cases in  
which the investor may take control of the issuer;  
 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,  
recourse or nonrecourse, convertible, or otherwise;  
 (xii) Convertible securities;  
 (xiii) Receivables;  
 (xiv) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the  
United States Code;  
 (xv) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the  
United States Code;  
 (xvi) Debt and equity derivative instruments of all types; and  
 (xvii) All other debt and equity private placements of all types, in each case whether  
issued by a partnership, limited liability company, trust, corporation, joint venture, or  
other entity or vehicle of any type or whether the issuer is organized or does business  
in one of the states or territories of the United States or outside the United States; and  
 (C) Any distribution in kind received by an eligible large retirement system in  
connection with any investment described in subparagraphs (A) and (B) of this  
paragraph.

(2) 'Eligible large retirement system' means a large retirement system as defined in  
subsection (a) of Code Section 47-20-84; provided, however, that such term shall not  
include the Teachers Retirement System of Georgia.

(b) In addition to the eligible investments authorized by Code Section 47-20-82, and  
without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,  
an eligible large retirement system is authorized to invest in alternative investments in  
accordance with the provisions of this Code section. Further, when provisions of Code  
Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section  
limit a particular form of investment to a certain percentage of retirement system assets,  
the denominator will include alternative investments with all other investments, but the  
numerator for any such calculation will not include any alternative investments, even if any

98 such alternative investment is of a like kind as the investments that are included in the  
99 numerator.

100 (c) An alternative investment may not exceed in any case 20 percent of the aggregate  
101 amount of:

102 (1) The capital to be invested in the applicable private pool, including all parallel pools  
103 and other related investment vehicles established as part of the investment program of the  
104 applicable private pool; and

105 (2) The securities being issued in the applicable private placement, in each case  
106 determined at the time such alternative investment is initially either made or committed  
107 to be made, as applicable, but taking into consideration any investments that have  
108 previously been or are concurrently being made or committed to be made.

109 Each alternative investment by an eligible large retirement system shall have previously  
110 been or shall be concurrently made or committed to be made by at least four other investors  
111 not affiliated with the issuer. Such four other investors shall be investing on substantially  
112 the same terms and conditions as those applicable to the investment by the eligible large  
113 retirement system to the extent such other investors are similarly situated with the eligible  
114 large retirement system. Alternative investments shall only be made in private pools and  
115 issuers that have at least \$100 million in assets, including committed capital, at the time the  
116 investment is initially made or committed to be made by an eligible large retirement  
117 system.

118 (d) Alternative investments by an eligible large retirement system may not in the aggregate  
119 exceed 5 percent of the retirement system assets at any time. The board of trustees of an  
120 eligible large retirement system shall have the discretion to designate whether any  
121 investment that is permitted to be made as an alternative investment pursuant to this Code  
122 section and is also permitted to be made as an investment pursuant to Code Section  
123 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an  
124 alternative investment made pursuant to this Code section or as an investment made  
125 pursuant to Code Section 47-20-83. If the eligible large retirement system is not in  
126 compliance with the limitations imposed by this subsection, it shall make a good faith  
127 effort to come into compliance within two years and in any event as soon as practicable  
128 thereafter; provided, however, that during any period of noncompliance the eligible large  
129 retirement system shall not increase the percentage of its assets committed to be invested  
130 in alternative investments but shall be permitted during such period to continue to make  
131 investments as required by the then existing commitments of the eligible large retirement  
132 system to alternative investments made before the period of noncompliance.

133 (e) The provisions of this subsection shall apply only to the Employees' Retirement System  
134 of Georgia. New commitments to alternative investments may not in the aggregate exceed

1 percent of the retirement system assets in any calendar year until the first occurrence that 4 1/2 percent of the retirement system assets are invested in alternative investments, at which time there shall be no limit on the percentage of commitments that may be made in any calendar year, subject to compliance with the other provisions of this Code section.

(f)(1) For purposes of this subsection, the term 'information' shall include, without limitation, preinvestment and postinvestment diligence information, including reviews and analyses prepared or provided by the issuer of a potential or actual alternative investment or prepared by or for an eligible large retirement system or otherwise relating to a potential or actual alternative investment.

(2) In addition to those records that are exempted from being open to inspection by the general public under Code Section 47-1-14 and except as otherwise provided in this subsection, an eligible large retirement system may in its discretion treat as confidential and withhold from public inspection and disclosure all information prepared or provided by the issuer of a potential or actual alternative investment or prepared by or for an eligible large retirement system or otherwise relating to a potential or actual alternative investment and held by an eligible large retirement system and may agree in making an alternative investment to treat such information as confidential and withhold it from public inspection and disclosure.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, an eligible large retirement system shall make publicly available the following information, but only to the extent the following information is otherwise available or maintained by said eligible large retirement system in the normal course and only after a period of one year from the date such records were created:

(A) The name of any alternative investment in which the eligible large retirement system has invested; excluding, in the case of an alternative investment in a privately placed investment pool, any information concerning the investments made by such privately placed investment pool;

(B) The date the eligible large retirement system first invested in an alternative investment described in paragraph (1) of this subsection;

(C) The aggregate amount of money, expressed in dollars, the eligible large retirement system has invested in alternative investments as of the end of any fiscal quarter;

(D) The aggregate amount of money and the value of any in kind or other distribution, in each case, expressed in dollars, the large retirement system received from alternative investments;

(E) The internal rate of return or the result under any other such standard used by the eligible large retirement system in connection with alternative investments for the asset class and for the period for which the return or standard was calculated; and

(F) The remaining cost of alternative investments in which the eligible large retirement system has invested as of the end of any fiscal quarter.

(4) The provisions of this Code section shall not restrict access to information and records under process of law or by officers otherwise entitled to them for official purposes, but such information and records shall have the same confidential status under process or with such officers as it does in the hands of an eligible large retirement system, and such officers shall respect such confidentiality to the extent consistent with their separate powers and duties.

(5) On the third Monday in January of each year, the director of each large retirement system shall provide a report to the Governor and the chairpersons of the House and Senate standing committees on retirement detailing the performance of the investments made pursuant to this Code section including, without limitation, a clear statement of the aggregate loss or profit on such investments for the preceding year. This paragraph shall not be construed so as to require the disclosure of any information otherwise protected by this subsection.

(g) Unless the information has been publicly released, preinvestment and postinvestment diligence information, including reviews and analyses, prepared or maintained by the large retirement system or by an alternative investment firm is confidential and exempted from being open to inspection by the general public pursuant to Article 4 of Chapter 18 of Title 50, except to the extent it is subject to disclosure from the requirements of subsection (f) of this Code section.

(h) The respective boards of trustees of eligible large retirement systems making investments authorized by this Code section shall adopt a code of ethics for the consideration of and investment in and disposition of alternative investments.

(i) Funds invested pursuant to this Code section and any return on such investment shall remain funds of the retirement system."

### SECTION 3.

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of records is not required and disclosure of exempting legal authority, is amended in subsection (a) by striking "or" at the end of paragraph (21), by replacing the period with "; or" at the end of paragraph (22), and by adding a new paragraph to read as follows:

"(23) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-20-87."

### SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.